

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
New Part 4 of the Commission's Rules)	ET Docket No. 04-35
Concerning Disruptions to Communications)	

To: The Commission

COMMENTS

The BloostonLaw Rural Carriers, as identified in Attachment A hereto, by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submit comments on the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. As an initial matter, the BloostonLaw Rural Carriers believe the Commission is well intentioned in seeking to ensure reliable telecommunications by expanding its outage reporting rules to include wireless communications. However, the BloostonLaw Rural Carriers are concerned that the Commission's proposal, as applied to small and rural wireless carriers, is impracticable in methodology and approach and would place undue financial, administrative and logistical burdens on small businesses and rural telephone companies – burdens that are not outweighed by their benefits.

As an alternative, the BloostonLaw Rural Carriers urge the Commission to make all outage reporting voluntary for small (*i.e.*, Tier III) wireless carriers. If any mandatory reporting requirement is imposed on small carriers, reports should be required on an annual or semi-annual basis, with contemporaneous outage reporting required only when it appears that the origin of the outage may be suspicious in nature. Because Tier III carriers have limited resources to devote to such reporting efforts (and should be encouraged to devote these resources to the prompt restoration of service in any event),

initial disruption reports for Tier III carriers should be required no sooner than 48 hours following a reportable outage. Final outage reports (which are more detailed) for Tier III carriers should be required no sooner than 60 days following the initial report. The Commission should also clarify for all wireless carriers what partial network outages (short of a switch failure) should be considered reportable.

Finally, because outage reports may contain information that discloses specific network vulnerabilities, the Commission should reconsider its proposal to make individual reports and information about specific wireless networks available to the public generally. While public access to outage reports since 1992 has enabled individual service providers, as well as manufacturers, to learn from each other's outage experiences, the dangers of providing public access to critical infrastructure information have been raised to a whole new level following the tragic events of September 11, 2001. The Commission should therefore take steps to protect critical infrastructure information from unnecessary disclosure by adopting procedures whereby any data that passes specific requirements will be exempt from the Freedom of Information Act ("FOIA") and cannot be accessed by third parties or state and local governments for civil litigation. In this regard, the Commission should seek to adopt procedures that are consistent with those adopted as part of the Critical Infrastructure Information Act of 2002 (the "CIIA")¹ and the Department of Homeland Security's Protected Critical Infrastructure Information ("PCII") program.

¹ The CIIA, codified at 6 U.S.C. §§ 131-134, was passed on November 25, 2002 as subtitle B of Title II of the Homeland Security Act (P.L. 107-296, 116 Stat. 2135, sections 211 – 215) and regulates the use and disclosure of information submitted to the Department of Homeland Security ("DHS") about vulnerabilities and threats to critical infrastructure.

I. Statement of Interest.

The BloostonLaw Rural Carriers operate broadband PCS and cellular radiotelephone service facilities licensed by the Commission in primarily rural and small markets throughout the United States, or are contemplating such operations. These carriers have a significant interest in the outcome of this proceeding. The rules ultimately adopted will directly impact their operational procedures and capabilities in the event of a service outage by imposing regulatory burdens on their limited resources when time would be better spent restoring service to the public, and in other productive endeavors.

II. All Outage Reporting Should Be Voluntary for Tier III Wireless Carriers

As the Commission has noted, many technological changes have occurred since the Commission adopted its initial service disruption reporting requirements in 1992. These changes have facilitated the rapid deployment of new communications technologies that have become increasingly important as substitutes for, and complements to, older communications services. With a majority of people in the United States today using wireless phones, the BloostonLaw Rural Carriers agree that it may be appropriate to extend the Commission's disruption reporting requirements to communications providers that are not wireline carriers.² At the same time, however, the Commission must also be careful not to impose undue regulatory requirements on carriers that have limited resources to devote to such efforts, such as small businesses and rural telephone companies.

² See NPRM at ¶1.

Small businesses and rural telephone companies generally operate their wireless networks in secondary and tertiary markets, with minimal staffing, and often times pursuant to switch-sharing and/or affiliation arrangements with regional and/or nationwide wireless carriers. To the extent that these smaller wireless carriers serve fewer than 30,000 “users,” they would appear to benefit from the NPRM proposal to measure whether and when an outage is reportable through a uniformly applied common metric that is based on the number of people potentially affected by an outage, and its duration. However, the common metric of 900,000 “user-minutes,” as applied to the rural wireless networks that are operated by many Tier III carriers, does not provide these carriers with sufficient additional time to identify and remedy the problem at hand, while at the same time preparing a required outage report for submission to the Commission. Given the design of rural wireless networks and the possibility that remote cell sites might be damaged or knocked off the air due to lightning strike, windstorm or other natural occurrence, this requirement is impracticable and would result in a plethora of unnecessary filings because of the theoretical “potential” that every user on the affected wireless network might be located within the same area that is served by an affected cell site, without being able to receive service from an adjacent cell site with overlapping service area. Rather than adopt a different reporting threshold for small and rural carriers (which would defeat the purpose of adopting a common metric), the BloostonLaw Rural Carriers urge the Commission to make all outage reporting voluntary for small (*i.e.*, Tier III) wireless carriers. If any mandatory reporting requirement is imposed on small carriers, reports should be required on an annual or semi-annual basis at most, with contemporaneous outage reporting required only when it appears that the

origin of the outage may be suspicious in nature. In all other cases, Tier III carriers should be exempted from mandatory outage reporting so that they may focus their immediate efforts totally on the restoration of service to the public, rather than dictating that scarce resources be devoted to the required filing of an outage report within two hours of discovering the outage, as proposed by the Commission.

Because Tier III carriers have limited resources to devote to such reporting efforts (and should be encouraged to devote these resources to the prompt restoration of service in any event), initial disruption reports for Tier III carriers should be filed electronically within 48 hours of discovering a reportable outage. This will also help to ensure the accuracy and completeness of initial reports, as well as encourage participation in a reporting program that is voluntary. For the same reasons, Tier III carriers should also be allowed additional time to prepare and submit their final outage reports, in cases where an initial report has been filed. In this regard, the BloostonLaw Rural Carriers believe that Tier III carriers should be afforded up to 60 days from the filing an initial outage report before the final report is due.

Indeed, many of the small and mid-sized carriers that fall into the Tier III category are affiliated with rural telephone companies or rural telephone cooperatives, which are local businesses that have a demonstrated commitment to serving their communities. Given this tradition of serving the public interest, the BloostonLaw Rural Carriers submit that it would be reasonable for the Commission to assume that these Tier III carriers will participate in the voluntary submission of outage reports, as well as participate with rural telephone industry groups and industry organizations, such as the

Network Reliability and Interoperability Council (“NRIC”), in the ongoing development and refinement of best practices.

III. The Proposed Wireless “Concentration Factor” May Significantly Overestimate the Number of Potentially Affected Users in Rural Areas and Impose a Disproportionate Reporting Burden on Tier III Carriers

In order to estimate the number of potential users affected by a significant system degradation of wireless service facilities, the Commission has proposed to require providers to determine the total call capacity of the affected Mobile Switching Center or Mobile Telephone Switching Office (“MSC”) switch (or, in the case of a MSC that has more than one switch, the total capacity of all switches in the affected MSC) and multiply the call capacity by the concentration factor of ten.³ A concentration ratio of 10-to-1 means that for every ten users eligible to access service from a particular switch there is one communication channel available to handle calls. Thus, a MSC switch that is capable of handling 3,000 simultaneous calls would have 30,000 potentially affected users (*i.e.*, 3,000 x 10).⁴ While this equation may be consistent with typical traffic loading and switch design parameters used in wireless networks that serve urban and metropolitan areas, it may actually lead to over-reporting of outages involving rural networks (which serve sparsely populated areas, with relatively few potentially affected users), and in cases where additional switch capacity is needed in order to support data-intensive end user applications, such as wireless email or “push-to-talk” service. To avoid imposing this disproportionate reporting burden on small and rural wireless

³ NPRM at ¶ 38.

⁴ *Id.*

carriers, the best remedy would be to exempt Tier III carriers from mandatory outage reporting, to the extent described above.

IV. The Commission Should Clarify Its Definition of What Constitutes an “Outage” in a Wireless Network

Section 63.100 (a)(1) of the Commission’s Rules defines an “outage” as “significant degradation in the ability of a customer to establish and maintain a channel of communications as a result of failure or degradation in the performance of a carrier’s network.”⁵ In a wireless network, if the switch fails, then clearly all users are affected. However, certain capabilities and/or subsets of users may be affected by a failure or outage of other network elements, and it is unclear under the proposed definition, for example, whether a single cell site failure should be considered an “outage” and how many users should be deemed “affected” by such a partial outage. Indeed, there is no discussion in the Commission’s proposal as to the extent to which, if any, roamers are to be included in the definition of “potentially affected users.” This is significant because if there is a failure of an IS-41 link, this might result in blocked calls for roaming customers, but the ability of home customers to make calls should not be affected. If a long distance link fails, this would result in failure of long-distance calls, but local and mobile-to-mobile calls would still go through. Similarly, if GPRS data fails, but voice and SMS is operational, would this be regarded as a reportable outage? The BloostonLaw Rural Carriers therefore urge the Commission to provide further clarification as to exactly what types of network failures should be deemed “significant.”

⁵ 47 C.F.R. §63.100 (a)(1).

V. The Commission Should Reconsider its Proposal to Make Individual Outage Reports Available to the Public and It Should Take Steps to Protect Critical Infrastructure Information from Unnecessary Public Disclosure

While public access to outage reports since 1992 has enabled individual service providers, as well as manufacturers, to learn from each other's outage experiences, the Blooston Rural Carriers believe that the dangers of providing public access to critical infrastructure information have been raised to a whole new level following the tragic events of September 11, 2001. To avoid the inadvertent compilation of a "roadmap" of wireless network vulnerabilities for terrorists and others who wish to inflict damage to the nation's infrastructure, the BloostonLaw Rural Carriers urge the FCC to protect this critical infrastructure information from unnecessary disclosure by adopting protections that are consistent with those included as part of the CIIA and the Department of Homeland Security's PCII program. In this regard, Section 214 (a)(1) provides as follows:

Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructures and protected systems, analysis, warding, interdependency study, recovery, reconstitution, or informational purpose, when accompanied by an express statement . . .

(A) "shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act [FOIA])."⁶

The BloostonLaw Rural Carriers recognize that the FCC may lack the authority under the Communications Act to exempt certain information that it collects from disclosure to the public under FOIA. However, since the network outage information

⁶ P.L. 107-296, 116 Stat 2135, § 214(a)(1)(A) (codified at 6 U.S.C. § 133(a)(1)(A)).

sought from wireless carriers is not customarily in the public domain, clarifying that the specific network outage information provided by wireless carriers is being *voluntarily shared* with the government in order to assist in increasing homeland security could provide the Commission with grounds to limit its disclosure to appropriate FCC staff (*i.e.*, to assist in the preparation of its annual report to Congress under Section 4(k) of the Act) and to appropriate industry groups, such as the Network Reliability and Interoperability Council (“NRIC”). In any event, the Commission should ensure that its revised outage reporting requirements are consistent with the policies contained in the CIIA.

VI. CONCLUSION

Whereby the BloostonLaw Rural Carriers respectfully request that the Commission exempt Tier III wireless carriers from mandatory outage reporting and seek to protect critical infrastructure information contained in such reports from unnecessary disclosure by following procedures that are consistent with those included as part of the CIIA and the Department of Homeland Security’s PCII program.

Respectfully submitted,

The BloostonLaw Rural Carriers

/s/ Harold Mordkofsky

By: Harold Mordkofsky
Cary Mitchell
Their Attorneys

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, DC 20037
Tel. (202) 659-0830

Filed: May 25, 2004

ATTACHMENT A

A list of the rural telephone companies, cooperatives, entrepreneurs and rural telco subsidiary companies that comprise the “Blooston Rural Carriers” is provided below.

Brookings Municipal Utilities d/b/a Swiftel Communications.....	Brookings, SD
CC Communications	Fallon, NV
Copper Valley Wireless, Inc.	Valdez, AK
Montana Wireless, Inc.	Missoula, MT
North Dakota Network Company	Minot, ND
Peñasco Valley Telephone Cooperative, Inc.	Artesia, NM
Poka Lambro Telephone Cooperative, Inc.	Tahoka, TX
Santel Communications Cooperative, Inc.....	Woonsocket, SD
South Central Utah Telephone Association, Inc.....	Escalante, UT
Walnut Telephone Company	Walnut, IA
WUE, Inc.	Pioche, NV